

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

APR 14 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte FRANKY LEE SHACKLEE

Appeal No. 2005-1018
Application No. 09/900,808

ON BRIEF

Before KIMLIN, KRATZ and DELMENDO, Administrative Patent Judges.
KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 24-26, 28-37 and 43-47. Claims 27 and 48 have been objected to by the examiner as being dependent upon a rejected base claim. Claim 24 is illustrative:

24. A container, comprising:

a storage vessel with an interior compartment, and an access opening at one end;

a removable end cap releasably and mechanically coupled to the storage vessel and operable to close the access opening;

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a first flange extending from an outer surface of the storage vessel, the first flange being sized to cooperate with a corresponding second flange extending from an exterior surface of the end cap;

a generally rectangular first stacking lug being disposed upon the outer surface and having a generally cylindrical, tubular interior diameter operable to receive the storage vessel therein; and

wherein the first flange extends from the outer surface of the storage vessel at a location between the access opening and the stacking lug thereby forming a cylindrical neck between the access opening and the stacking lug.

The examiner relies upon the following references in the rejections of the appealed claims:

Arnot	2,916,141	Dec. 8, 1959
Rocher	3,599,826	Aug. 17, 1971
Snyder et al. (Snyder)	4,660,733	Apr. 28, 1987
LaBianca et al. (LaBianca)	4,733,773	Mar. 29, 1988
Fischer et al. (Fischer)	4,785,930	Nov. 22, 1988
Seitz	5,438,935	Aug. 8, 1995

Appellant's claimed invention is directed to a container comprising a storage vessel having an interior compartment for shipping ammunition. The container comprises a removable end cap having a flange extending from its exterior surface which cooperates with a flange extending from the outer surface of the storage vessel. The container also comprises a generally rectangular stacking lug on its outer surface. The flange extending from the outer surface of the storage vessel is located between the access opening of the vessel and the stacking lug.

Appealed claims 24, 30-37, 43 and 44 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Fischer. Also, the appealed claims stand rejected under 35 U.S.C. § 103 as follows:

- (a) claims 25, 26, 46 and 47 over Fischer in view of Rocher;
 - (b) claims 25 and 46 over Fischer in view of Seitz;
 - (c) claim 28 over Fischer in view of LaBianca;
 - (d) claim 29 over Fischer in view of LaBianca and Snyder;
- and
- (e) claim 45 over Fischer in view of Arnot.

We have thoroughly reviewed the respective positions advanced by appellant and the examiner. In so doing, it is our determination that the examiner's rejections are not sustainable.

We consider first the examiner's § 102 rejection. Although we agree with the examiner that Fischer meets the broadly claimed cooperation between the first flange and a second flange extending from the end cap, notwithstanding the presence of ring seal 25, we concur with appellant that Fischer does not describe the claimed container within the meaning of § 102. As properly urged by appellant, Fischer does not describe a flange extending from the outer surface of the storage vessel being located between the access opening of the vessel and the stacking lug. While the examiner philosophically posits that "the access

opening is an element which is not physical (since it can't be touched) and that the access opening or any opening is the absence of a closure" (page 7 of Answer, second paragraph), we agree with appellant that one of ordinary skill in the art would reasonably interpret the recited access opening as the location coinciding with the opened end of the storage vessel. Since we agree with appellant that "the first flange is located between the end of the storage vessel (where the access opening is) and the stacking lug" (page 2 of Reply Brief, third paragraph), it follows that Fischer does not describe the claim recitation.

We also concur with appellant that Fischer does not describe the claimed stacking lug having a generally cylindrical, tubular interior diameter. Since the common definition of the word "tube" is a hollow cylinder or pipe that is long in proportion to its diameter, we cannot subscribe to the examiner's reasoning that because the plates of Fischer's collar 8 have a finite thickness, each defines a tubular interior. We agree with appellant that since the openings in the front and rear faces of Fischer's collar 8 are not connected, the stacking elements of the reference do not comprise the claimed generally cylindrical tubular interior diameter.

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Inasmuch as the secondary references of Seitz, LaBianca, Snyder, Rocher and Arnot have been cited by the examiner for features of different dependent claims, and do not remedy the deficiencies of Fischer outlined above, it follows that we cannot sustain the examiner's § 103 rejections.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is reversed.

REVERSED


EDWARD C. KIMLIN)
Administrative Patent Judge)


PETER F. KRATZ)
Administrative Patent Judge)

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ROMULO H. DELMENDO)
Administrative Patent Judge)

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